

**REMARKS**

Applicants respectfully request reconsideration and allowance of claims 1-2 and 5 that are pending in the above-identified patent application.

In paragraph 1 of the Office Action the Oath/Declaration stands objected to because the title of the invention does not match the title of the invention according to the Bib Data Sheet and U.S. 6,645,249. By the amendment to the Title hereinabove applicants submit this objection is overcome.

In paragraph 2 of the Office Action the disclosure stands objected to because of the title (see above) and the CROSS REFERENCE TO RELATED APPLICATIONS required updating to reflect the issuance of U.S. 6,673,113. By the amendments hereinabove applicants have amended the specification to reflect the issuance of United States Patent No. 6,645,249 based on United States Patent Application Serial No. 10/035,668 and United States Patent No. 6,673,113 based on U.S. Patent Application Serial No. 09/982,148.

In paragraph 3 of the Office Action claim 1 was objected to. Applicants submit the foregoing amendment to claim 1 overcomes this objection.

In paragraphs 4-5 of the Office Action claims 1-7 stand rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-6 of prior U.S. Patent No. 6,645,249 (“’249 patent”). Applicants respectfully traverse this rejection.

Claim 1 as filed in the present application does not identify subject matter identical to issued claim 1 of the ‘249 patent. Claim 1 of the ‘249 patent contains all the limitations of claim 1 of the present application but contains the additional limitation “wherein said second plate further comprises a post structure rising off the inner surface thereof, and which post structure includes a ball-shaped head”. Claim 1 of the present application is clearly broader than issued claim 1 of the

'249 patent. Since there are embodiments of the invention that fall within the scope of one claim but not the other, identical subject matter is not defined by both claims and statutory double patenting does not exist. MPEP 804. Pending claims 2 and 5, dependent on pending claim 1, are likewise not identical to any claim of the '249 patent. Applicants have canceled claims 3-4 and 6-7. Applicants submit this rejection is traversed.

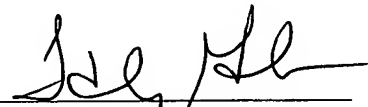
Pending claim 1 is patentable over both Caenen et al. (FR 2,718,635) and Marnay et al (WO 01/01893) as cited by the Examiner during prosecution of the parent of the present application. Neither Caenen et al. nor Marnay et al. disclose or suggest an intervertebral spacer device having at least one multi-pronged domed spring restoring force providing element.

In view of the foregoing, Applicants submit that the instant claims are in condition for allowance. Early and favorable action is earnestly solicited.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 11-0223 therefore.

Respectfully submitted

Dated: July 21, 2004

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